

AN ORDINANCE

2011-09-01-0721

**AUTHORIZING A CHAPTER 380 ECONOMIC DEVELOPMENT  
PROGRAM GRANT AGREEMENT WITH HVHC, INC. ("HVHC") IN  
THE AMOUNT OF \$3,973,200.00; AUTHORIZING THE NEGOTIATION  
AND EXECUTION OF AN ASSOCIATED PARKING AGREEMENT.**

\* \* \* \* \*

**WHEREAS**, HVHC is a wholly owned subsidiary of Highmark Inc., a private, worldwide provider of healthcare and vision services; and

**WHEREAS**, HVHC established its corporate headquarters in San Antonio in 1988 and currently employs 265 individuals at its facility located at 11103 West Avenue, San Antonio, Texas 78213; and

**WHEREAS**, HVHC is engaged in an economic development project that will both relocate its current workforce to a new location and expand its current business presence by consolidating another wholly-owned subsidiary, Davis Vision, into a central location (the "Project"); and

**WHEREAS**, HVHC has identified office space located at 175 E. Houston, San Antonio, TX 78205 (the "Property") as a potential destination for the Project; and

**WHEREAS**, the City seeks to incentivize HVHC to retain its local workforce by developing the Project within the City of San Antonio; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, the City is authorized to create a program to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality; and

**WHEREAS**, in accordance with City Ordinance No. 100684, the City created an Economic Development Program (the "Program") for the purpose of making grants available for economic development projects that the City finds will accomplish the purpose and goals of Chapter 380; and

**WHEREAS**, HVHC is seeking a Chapter 380 Economic Development Grant in the amount of \$3,973,200.00 to assist in deferring costs associated with the Project, including parking for its projected combined workforce of 350 individuals; and

**WHEREAS**, the City finds that the goals of Chapter 380 will be met by assisting HVHC in undertaking and completing the Project and has identified economic development funds for use in carrying out this purpose; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The terms and conditions of an Economic Development Program Grant Agreement with HVHC, Inc., to include a Parking Agreement for up to 350 parking spaces at 400 S. St. Mary's St., San Antonio, TX 78205 (the "Agreements"), are hereby approved. The City Manager, or her designee, is authorized to execute said Agreements in accordance with this Ordinance. Copies of the Agreements in substantially final form are attached as "Attachment I" and made a part of this ordinance. Final copies of the Agreements shall be attached when executed.

**SECTION 2.** Funding for this ordinance of \$795,000.00 is contingent upon approval of the Fiscal Year 2012 Budget for Fund 29059000, Cost Center 1604010001 and General Ledger 5201040.

**SECTION 3.** If approved by council, payment not to exceed the budgeted amount of \$795,000.00 is authorized to HVHC, Inc. and should be encumbered with a purchase order.

**SECTION 4.** Funding for this ordinance of \$255,000.00 is contingent upon approval of the Fiscal Year 2013 Budget for Fund 29059000, Cost Center 1604010001 and General Ledger 5201040.

**SECTION 5.** If approved by council, payment not to exceed the budgeted amount of \$255,000.00 is authorized to HVHC, Inc. and should be encumbered with a purchase order.

**SECTION 6.** The financial allocations in this Ordinance are subject to approval by the Chief Financial Officer (CFO), City of San Antonio. The CFO may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific Cost Centers, WBS Elements, Internal Orders, General Ledger Accounts, and Fund Numbers as necessary to carry out the purpose of this Ordinance.

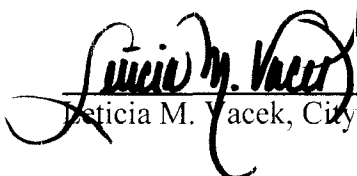
**SECTION 7.** This Ordinance shall become effective immediately upon its passage by eight (8) votes or more and upon ten (10) days following its passage if approved by fewer than eight (8) votes.

PASSED AND APPROVED this 1<sup>st</sup> day of SEPTEMBER 2011.



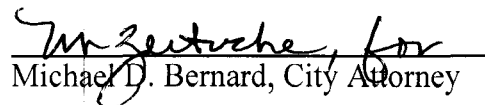
M A Y O R  
Julián Castro

ATTEST:



Leticia M. Yacek, City Clerk

APPROVED AS TO FORM

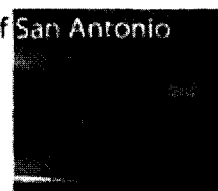


Michael D. Bernard, City Attorney



Request for  
**COUNCIL  
ACTION**

City of San Antonio



## Agenda Voting Results - 26

<b>Name:</b>	7, 8, 9, 10, 11, 12, 14, 15, 16A, 16B, 16C, 16D, 16E, 16F, 16G, 16H, 16I, 16J, 16K, 16L, 16N, 16O, 16P, 16Q, 16R, 18, 19, 20, 21, 23, 24, 25, 26						
<b>Date:</b>	09/01/2011						
<b>Time:</b>	02:31:57 PM						
<b>Vote Type:</b>	Motion to Approve						
<b>Description:</b>	An Ordinance authorizing a Chapter 380 Economic Development Program Grant Agreement with HVHC, Inc. ("HVHC") in an estimated amount of \$3,973,200.00 over 10 years; authorizing the negotiation and execution of an associated parking agreement. [Pat DiGiovanni, Deputy City Manager / Interim Director, Center City Development Office]						
<b>Result:</b>	Passed						
Voter	Group	Not Present	Yea	Nay	Abstain	Motion	Second
Julián Castro	Mayor		x				
Diego Bernal	District 1		x				
Ivy R. Taylor	District 2		x				
Jennifer V. Ramos	District 3		x			x	
Rey Saldaña	District 4		x				
David Medina Jr.	District 5	x					
Ray Lopez	District 6		x				x
Cris Medina	District 7		x				
W. Reed Williams	District 8		x				
Elisa Chan	District 9		x				
Carlton Soules	District 10		x				

# **ATTACHMENT “I”**

**CHAPTER 380 ECONOMIC DEVELOPMENT PROGRAM GRANT AGREEMENT  
BETWEEN THE CITY OF SAN ANTONIO AND HVHC, INC.**

This Economic Development Program Grant Agreement (hereinafter referred to as this "Agreement") is made and entered into by and among the City of San Antonio (the "GRANTOR"), a municipal corporation of the State of Texas, acting by and through its City Manager or her designee and HVHC, Inc. (hereinafter referred to as "GRANTEE"), acting by and through its \_\_\_\_\_. Together, the GRANTOR and GRANTEE may be referred to herein as the "Parties."

**WHEREAS**, GRANTEE is a wholly owned subsidiary of Highmark Inc., a private, worldwide provider of healthcare and vision services; and

**WHEREAS**, Eye Care Centers of America, Inc. ("ECCA") a subsidiary of GRANTEE, established its headquarters in San Antonio in 1988 and currently employs 265 individuals at its facility located at 11103 West Avenue, San Antonio, Texas 78213; and

**WHEREAS**, GRANTEE is engaged in an economic development project that will both relocate the current headquarters workforce of ECCA and its subsidiaries from its existing headquarters to a new location and consolidate certain personnel from another wholly-owned subsidiary, Davis Vision, Inc. ("Davis Vision") into a central location with the ECCA headquarters personnel (the "Project"); and

**WHEREAS**, GRANTEE has identified office space located in a building at 175 E. Houston St., San Antonio, TX 78205 (the "Property") which it has considered as a potential destination for the Project along with other locations outside of the City of San Antonio; and

**WHEREAS**, GRANTOR seeks to encourage GRANTEE to develop the Project within the City of San Antonio; and

**WHEREAS**, pursuant to Chapter 380 of the Texas Local Government Code, GRANTOR is authorized to grant funds to promote state or local economic development and to stimulate business and commercial activity in the municipality and pursuant to City Ordinance No. 100684 GRANTOR adopted an Economic Development Program which meets the requirements of Chapter 380 of the Texas Local Government Code; and

**WHEREAS**, GRANTOR has identified funds to be made available to incentivize GRANTEE to undertake and complete the Project; and

**WHEREAS**, the City Council of GRANTOR has authorized the City Manager or her designee to enter into this Agreement with GRANTEE in accordance with City Ordinance No. 2011-09-01-\_\_\_\_\_, passed and approved on September 1, 2011 to grant said funds; **NOW THEREFORE:**

The Parties hereto severally and collectively agree, and by the execution hereof are bound, to the mutual obligations herein contained and to the performance and accomplishment of the tasks hereinafter described:

**SECTION 1. AGREEMENT PURPOSE**

The purpose of this Agreement is to provide certain Economic Development Grants to GRANTEE as an incentive for GRANTEE to undertake the Project, including the relocation of its ECCA headquarters operations and consolidation of its wholly-owned subsidiary, Davis Vision, to the Property.

The GRANTOR anticipates that if the Project is undertaken at the Property, the Project will promote local economic development and stimulate business and commercial activity in the City of San Antonio. As such, GRANTOR is willing to support the Project, if undertaken at the Property, through the Economic Development Grants provided in this Agreement to provide funds to be used to defer costs associated with undertaking and completing the Project at the Property.

## SECTION 2. PROJECT REQUIREMENTS

In consideration of GRANTOR providing the economic development grants provided in Section 3 of this Agreement, GRANTEE will comply with the following obligations:

A. Lease Agreement. GRANTEE, shall cause Visionary Properties, Inc. ("VPI"), a wholly owned subsidiary of ECCA, to enter into a Lease Agreement (the "Lease") prior to December 31, 2011 with \_\_\_\_\_ to locate on the Property. The Lease must have a term of not less than ten (10) years, and GRANTEE shall provide an Acknowledgement of Lease (Exhibit "A"), indicating the Term, square footage and conditions for termination, executed by GRANTEE and the lessor of the Property. Notwithstanding the foregoing, should VPI fail to execute the Lease prior to December 31, 2011, this Agreement shall be terminated and neither Party shall be held to any of the terms or conditions herein.

B. Business Activities. GRANTEE shall cause ECCA, its subsidiaries, and Davis Vision to relocate their respective corporate headquarters, for an optical retailer and a vision insurance provider respectively, to, the premises demised under the Lease in accordance with the time frames described in Section 2.C. below, and thereafter operate same and/or such other optical or health care related business as, GRANTEE, its parent company, any of its subsidiaries, or otherwise related entities, may engage in from time to time (the "Business Activities") at such premises for the Term of this Agreement (as defined in Section 4), except to the extent said premises may be rendered unsuitable for such use due to a Force Majeure Event (as defined in Section 12 of this Agreement). Except as provided herein, GRANTEE covenants and agrees that it shall not change the Business Activities without the written consent of GRANTOR, such consent not to be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary if a Related Organization (being defined as a parent, subsidiary, direct or indirect at any level, or affiliate organization of GRANTEE or any entity which succeeds to or receives an assignment of GRANTEE's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of GRANTEE, or any parent, subsidiary or affiliate of such entity) occupies the Property and continues to use the premises demised under the Lease for the Business Activities consistent with the terms and conditions of this Agreement. To be eligible for the benefits of this Agreement, the Related Organization must agree in writing, to comply with all applicable terms herein from and after the date it succeeds to GRANTEE's interest in this Agreement, and if requested by GRANTOR the Related Organization must enter into an amendment to this Agreement evidencing such agreement. In the event of any such transfer to a Related Organization, GRANTEE must notify CITY in writing of same no later than the 30<sup>th</sup> day following the effective date of such transfer. GRANTEE acknowledges that any change in the principal use of Visionary Properties, Inc.'s premises at the Property from that contemplated herein without prior written approval of GRANTOR, to the extent same is required under this Agreement, may result in a loss of the economic development grants to be provided to GRANTEE under this Agreement and the recapture of grant funds disbursed under this Agreement in accordance with Section 12.

C. Full-Time Jobs. Upon execution of the Lease, VPI will use reasonable efforts, subject to completion of its leasehold improvements at the Property, to relocate: (i) the ECCA headquarters to the Property no later than March 31, 2012, and (ii) Davis Vision's headquarters to the Property prior to December 31, 2012. On or before December 31, 2012, a combined workforce of THREE HUNDRED

AND FIFTY (350) Full-Time Jobs, as defined below, must be initially relocated to and/or created at the premises demised under the Lease unless, and except to the extent GRANTEE is prevented from causing such jobs to be so relocated and/or created due to a Force Majeure Event.

1. For the purposes of this Agreement, a Full-Time Job shall be equivalent to two thousand fifteen (2,015) straight-time paid hours in a fiscal year. It is agreed by the Parties that for purposes of meeting the required job numbers for all purposes under this Agreement, "Full-Time Jobs" shall be calculated using both filled and open positions, so long as GRANTEE is actively recruiting to fill such open positions.

2. GRANTEE agrees that in addition to the requirements of Section 2(C)(1) above, to qualify as a Full Time Job under this Agreement, the minimum wage for the employee must be TEN DOLLARS AND SEVENTY-FIVE CENTS (\$10.75) per hour exclusive of the value of all benefits provided to such employees. After one full calendar year of full operations at the premises demised under the Lease, seventy percent (70%) of the Full-Time Job employees at the premises demised under the Lease shall have an hourly wage of not less than THIRTEEN DOLLARS AND SEVENTY-SIX CENTS (\$13.76) per hour exclusive of the value of all benefits provided to such employees. GRANTEE shall submit Annual Wage Compliance Reports certifying their compliance with these wage requirements, in accordance with the terms of Section 2.E. below. For purposes of calculating the "hourly wage" of any salaried employee the employee's annual salary will be divided by 2015 to calculate the hourly wage equivalent.

3. Additionally, to qualify as a "Full-Time Job employee" for purposes of this Agreement, each such employee will be offered an opportunity to participate in GRANTEE's employee benefits program of its respective employer which shall be substantially similar to employee benefits offered to similarly situated employees of such employer in other locations. In addition, in order to qualify as a "Full-Time Job employee", said employee shall be offered a health plan which provides coverage for their eligible dependents on terms substantially similar to the coverage provided to the eligible dependents generally of its respective employer's non-temporary full-time employees at other locations.

4. The average annual salary, including the value of all benefits, provided to all Full-Time Job employees at the premises demised under the Lease shall be no less than FIFTY THOUSAND AND NO/100 DOLLARS (\$50,000.00).

D. Certification. Within sixty (60) days of the end of each calendar year during the term of this Agreement, GRANTEE will provide GRANTOR's Director of International and Economic Development Department with an annual certification from an officer of GRANTEE attesting to the number of Full-Time Jobs relocated to and/or maintained at the premises demised under the Lease during the preceding year, as well as wages paid and the annual average salary for all such employees.

### **SECTION 3. ECONOMIC DEVELOPMENT PROGRAM GRANT**

In exchange for GRANTEE pursuing and completing the Project at the Property, GRANTOR will provide the following economic incentive grants (the "Grants") to the GRANTEE:

A. Job Relocation Grant. GRANTOR will provide GRANTEE with an Economic Development Program Grant in an amount equal to \$3000 per Full-Time Job relocated to and/or created at the premises demised under the Lease by ECCA, Davis Vision, VPI or any other subsidiary of HVHC, any Related Organization or any other permitted assignee of this Agreement, (the "Job

Relocation Grant”) not to exceed a maximum grant of ONE MILLION FIFTY THOUSAND AND NO/100 DOLLARS (\$1,050,000.00).

- B. Parking and Parking Reimbursement. Contemporaneously with the execution hereof, GRANTOR has entered into a Parking Agreement in form and content identical to that set forth on Exhibit “B” attached hereto with VPI. GRANTOR will, subject to the terms and conditions of this Agreement provide additional economic development grants (the “Parking Reimbursement Grants”) in a cumulative amount of approximately TWO MILLION EIGHT HUNDRED SIXTY-NINE THOUSAND NINE HUNDRED AND FIFTY-SIX NO/100 DOLLARS (\$2,869,956.00) to pay a portion of the costs associated with the Parking Agreement, as more particularly described below.
- C. Grant Disbursement. Following the execution of this Agreement by the Parties, GRANTEE providing the Acknowledgement of Lease to GRANTOR, and the Business Activities commencing on the Property, the grant funds will be disbursed over the Term of this Agreement, subject to the terms and conditions herein, as follows:
1. Job Relocation Grant Disbursement. GRANTOR shall disburse the Job Relocation Grant as follows:
    - (a) Initial Payment. An initial payment of SEVEN HUNDRED AND NINETY FIVE THOUSAND DOLLARS AND NO/100 (\$795,000.00) within thirty (30) days of GRANTOR having received the certification from an officer of GRANTEE confirming that on or before March 31, 2012, ECCA Davis Vision, and/or other subsidiaries of either of them or HVHC, or any Related Organization or other permitted assignee of this Agreement have collectively relocated TWO HUNDRED SIXTY-FIVE (265) Full-Time Jobs from their respective existing headquarter facilities to, or otherwise created such jobs at, the premises demised under the Lease.
    - (b) Additional Grant Disbursement. Following December 31, 2012, GRANTEE may request additional Job Relocation Grant funds in an amount equivalent to the number of additional Full-Time Jobs located at the Property multiplied by THREE THOUSAND DOLLARS AND NO/100. Such request may include any Full-Time Jobs relocated to and/or created at the premises demised under the Lease prior to March 31, 2012 that were not submitted for payment under Section 3(C)(1)(a) above and those Full-Time Jobs relocated to or otherwise created at the premises demised under the Lease after March 31, 2012; provided the cumulative total of the Job Relocation Grant funds requested does not exceed ONE MILLION AND FIFTY THOUSAND AND NO/100 DOLLARS (\$1,050,000.00). If GRANTEE relocates or creates the maximum number of jobs necessary to receive the remainder of the Job Relocation Grants prior to December 31, 2012, GRANTEE may file its request for reimbursement sooner than that date with the understanding that for purposes of calculating the required date of payment such request will be deemed to be dated December 31, 2012. GRANTEE’s request for disbursement must be accompanied by the written certification of an officer of GRANTEE confirming that ECCA, Davis Vision and/or other subsidiaries of either of them or GRANTEE or any Related Organization or other permitted assignee of this Agreement have relocated the number of Full-Time Jobs for which the disbursement is sought with their respective existing headquarters facilities to, or otherwise created such jobs at, the premises demised under the Lease. GRANTOR shall disburse the requested grant funds to GRANTEE within forty-five (45) days of the date GRANTOR receives the request and supporting certification.



The Parties agree that if, on January 31, 2013, GRANTEE has not submitted a request to provide Grant disbursements for THREE HUNDRED AND FIFTY (350) Full-Time Jobs, then GRANTEE shall forfeit its right to thereafter submit for payment of then unrequested Job Relocation Grants and GRANTOR shall have no obligation to make advances in the future for any then unrequested Job Relocation Grants.

2. Parking Reimbursement Grant. Following the execution of the Parking Agreement, and in accordance with its terms and conditions, GRANTOR will direct disbursement of the Parking Reimbursement Grant from its General Fund or other resources to its Parking Fund to satisfy the financial obligations of VPI, or its permitted assigns, under the Parking Agreement as follows:

(a) In Years one (1) through five (5) of the Parking Agreement, GRANTOR shall pay ONE HUNDRED PERCENT (100%) of the parking fees assessed to VPI through the Parking Agreement.

(b) In Years six (6) through ten (10) of the Parking Agreement, GRANTOR shall pay SIXTY-PERCENT (60%) of the parking fees assessed to these designated parking spaces and VPI shall pay the remaining FORTY-PERCENT of parking fees in accordance with the terms and conditions in the Parking Agreement.

D. Project Coordinator. In addition to the economic development grant funds provided herein, GRANTOR agrees to designate a Permit Coordinator to assist GRANTEE in obtaining the necessary permits and approvals for the finish-out of the premises demised under the Lease.

#### **SECTION 4. AGREEMENT PERIOD**

This Agreement shall commence upon the Effective Date listed on the signature page of this Agreement and terminate upon the earlier of: (A) the expiration of ten (10) years following the Effective Date (the "Term") except to the extent same relates to the Parking Reimbursement Grants which will continue through the final payment of the Parking Reimbursement Grant; or (B) termination of this Agreement as otherwise provided herein.

#### **SECTION 5. GRANTOR'S OBLIGATIONS**

A. Payment. GRANTEE acknowledges that the payments of the Grants shall be subject to, and made solely from, annual appropriations of the GRANTOR in the budget year in which they are to be paid as may be legally set aside for the implementation of ARTICLE III, Section 52A of the Texas Constitution, Chapter 380 of the Texas Local Government Code, or any other economic development or financing program authorized by statute or home-rule powers of the GRANTOR under applicable Texas law, subject to any applicable limitations or procedural requirements. In the event that GRANTOR does not appropriate funds necessary to pay the Grants in any budget year (as reflected in the GRANTOR's adopted budget for such year), GRANTOR shall not be liable to GRANTEE for such payments or expenditures unless and until such appropriation of funds is made provided, however, that, in such event, GRANTEE may, in its sole discretion, either then (i) terminate this Agreement, in which event GRANTEE and GRANTOR shall have no further obligations under this Agreement including, but not limited to any obligations for the year in respect to which said unappropriated funds relate or (ii) elect to continue this Agreement, in which event, GRANTEE shall be entitled to recoup the unappropriated amounts of the Parking Reimbursement Grants by crediting same against any and all sums thereafter become due and owing by GRANTEE, or any of its subsidiaries (direct or indirect) or affiliates to

GRANTOR, including, without limitation, any amounts owed by Visionary Properties, Inc. under the Parking Agreement.

B. No Liability for Costs. Except as set forth in this Agreement, GRANTOR will not be liable to GRANTEE or other entity for any costs incurred by GRANTEE in connection with this Agreement.

## **SECTION 6. RETENTION AND ACCESSIBILITY OF RECORDS**

A. Retention. GRANTEE and/or its subsidiaries shall maintain the records and supporting documentation (the "Records") relating to the relocation and maintaining of Full-Time Jobs to the premises demised under the Lease. GRANTEE shall retain such records and any supporting documentation through the end of the term of this Agreement.

B. Access. GRANTEE shall, following at least fourteen (14) days advance, written notice from GRANTOR, give GRANTOR, its designee, or any of their duly authorized representatives, access to the Records at the premises demised under the Lease during normal business hours. GRANTOR's access to the Records will be limited to reviewing information needed to verify that GRANTEE is and has been complying with the terms of this Agreement. GRANTOR may not copy or otherwise take control of such Records. Any information that is not required by law to be made public shall be kept confidential by GRANTOR. GRANTEE shall not be required to disclose to GRANTOR any information that by law GRANTEE is required to keep confidential. Should any good faith dispute or question arise as to the validity of the data provided, GRANTOR reserves the right to require GRANTEE to obtain an independent firm to verify the information. This certified statement by an independent firm shall be provided at the sole cost of GRANTEE. The rights to access the Records shall continue through the term of this Agreement. Failure to provide reasonable access to the Records to authorized City representatives shall give GRANTOR the right to suspend or terminate this Agreement as provided for herein, or any portion thereof, for reason of default.

## **SECTION 7. MONITORING**

GRANTOR reserves the right to confirm GRANTEE's compliance with the terms and conditions of this Agreement. GRANTOR will provide GRANTEE with a written report of the monitor's findings. If the monitoring report notes deficiencies in GRANTEE's performances under the terms of this Agreement, the monitoring report shall include a listing of requirements for the correction of such deficiencies by GRANTEE and a reasonable amount of time in which to attain compliance. Failure by GRANTEE to take action specified in the monitoring report within a reasonable amount of time may be cause for suspension or termination of this Agreement, in accordance with Sections 14 and 15 herein.

## **SECTION 8. CONFLICT OF INTEREST**

If applicable, GRANTEE shall ensure that no employee, officer, or individual agent of GRANTOR shall participate on behalf of GRANTEE in the selection, award or administration of a subcontract supported by funds provided hereunder if a conflict of interest would be involved. Such conflict of interest would arise when: (1) the employee, officer, or individual agent; (2) any member of his or her immediate family; (3) his or her partner; or, (4) any organization which employs, or is about to employ any of the above, has a financial or other interest in the firm or person selected to perform the subcontract and the relationship calls for payments to be made to such subcontractor on terms which are greater than those which are customary in the industry for similar services conducted on similar terms. To the extent GRANTEE hires any former or current employee or official of GRANTOR who would be subject to the GRANTOR's ethics policy, as same exists from time to time, GRANTEE shall take

reasonable efforts to ensure that such person complies with all applicable requirements of the GRANTOR's ethics ordinance in dealings between GRANTOR and GRANTEE.

#### **SECTION 9. NONDISCRIMINATION AND SECTARIAN ACTIVITY**

A. Nondiscrimination. GRANTEE shall use reasonable efforts to ensure that no person shall, on the ground of race, color, national origin, religion, sex, age or handicap, be excluded from participation in, be denied the benefits of, be subjected to discrimination under, or be denied access to any program or activity of, GRANTEE funded in whole or in part with funds made available under this Agreement.

B. Sectarian Activity. None of the performances rendered by GRANTEE under this Agreement shall involve, and no portion of the funds received by GRANTEE under this Agreement shall be used in support of, any sectarian or religious activity, nor shall any facility used in the performance of this Agreement be used for sectarian instruction or as a place of religious worship.

#### **SECTION 10. LEGAL AUTHORITY**

A. Legal Authority. Each party assures and guarantees to the other that they possesses the legal authority to enter into this Agreement, to receive/deliver the funds authorized by this Agreement, and to perform their obligations hereunder.

B. Signatories. Each party represents and warrants to the other that the person or persons signing and executing this Agreement on behalf of such party has been duly authorized to execute this Agreement on behalf of that party and to validly and legally bind that party to all terms, performances and provisions herein set forth.

#### **SECTION 11. GOVERNING LAW AND VENUE**

A. Notice to City. GRANTEE shall give GRANTOR immediate notice in writing of any (i) OSHA complaint filed by an employee of GRANTEE or any of its subsidiaries concerning the premises demised under the Lease of (ii) notice of any bankruptcy of GRANTEE, or (iii) any notice given by GRANTEE or any of its subsidiaries or affiliates to its employees at the premises demised under the Lease required under any applicable laws pertaining to contemplated job reductions at such premises. GRANTEE shall submit a copy of each such notice required hereunder to GRANTOR within 30 calendar days after receipt or issuance, as applicable.

B. Texas Torts Claims Act. GRANTEE acknowledges that GRANTOR is a political subdivision of the State of Texas and is subject to, and complies with, the applicable provisions of the Texas Tort Claims Act, as set out in the Civil Practice and Remedies Code, Section 101.001 et. seq., and the remedies authorized therein regarding claims and causes of action that may be asserted by third parties for accident, injury or death.

C. Venue. This Agreement shall be interpreted according to the Constitution and the laws of the State of Texas. Venue of any court action brought directly or indirectly by reason of this Agreement shall be in Bexar County, Texas.

#### **SECTION 12. ATTORNEY'S FEES**

In the event GRANTEE or GRANTOR should default under any of the provisions of this Agreement and the other should employ attorneys or incur other expenses for the collection of the payments due under this Agreement or the enforcement of performance or observance of any obligation

or agreement on the part of the defaulting party herein contained, the defaulting party agrees to pay to the reasonable fees of such attorneys and such other expenses so incurred by the non-defaulting party.

### **SECTION 13. CHANGES AND AMENDMENTS**

A. Amendments in Writing. Except as provided below, any alterations, additions, or deletions to the terms of this Agreement shall be by amendment hereto in writing and executed by the Parties to this Agreement.

B. 380 Program. It is understood and agreed by the Parties hereto that performances under this Agreement shall be rendered in accordance with the laws and rules governing the Economic Development Program as set forth in Texas Local Government Code Chapter 380, and the terms and conditions of this Agreement.

### **SECTION 14. SUSPENSION**

A. Notice and Cure Period. Notwithstanding the provisions of Chapter 2251 of the Texas Government Code, if applicable, or anything else in this Agreement to the contrary, in the event GRANTEE fails to comply with the terms of this Agreement, GRANTOR shall provide GRANTEE with written notification as to the nature of the non-compliance and grant GRANTEE a sixty (60) day period following the date of the GRANTEE's receipt of GRANTOR's written notification to cure any issue of non-compliance. Should GRANTEE fail to cure any default within this period of time, or such longer period of time as may be reasonably necessary for GRANTEE to cure the default in question if same cannot reasonably be cured within such sixty (60) day period, the GRANTOR may, upon written Notice of Suspension to GRANTEE, suspend this Agreement in whole or in part and withhold further payments to GRANTEE Agreement until the default is cured. Such Notice of Suspension shall include: (1) the reasons for such suspension; (2) the effective date of such suspension; and, (3) in the case of partial suspension, the portion of the Agreement to be suspended.

B. Lifting of Suspension. A suspension under this Section shall be lifted by GRANTOR upon a showing by GRANTEE that the event of default has been cured or by a written waiver of GRANTOR of the term(s) in question.

D. No Liability. GRANTOR shall not be liable to GRANTEE or to GRANTEE's creditors for costs incurred during any term of suspension of this Agreement.

### **SECTION 15. DEFAULT, TERMINATION AND RECAPTURE, AND OTHER REMEDIES**

A. Relocation Defined. For purposes of this section, "Relocation" "Relocated" or "Relocate" shall mean GRANTEE or a Related Organization, or any other permitted transferee of GRANTEE's rights under this Agreement, which has taken the place of GRANTEE, transferring the Business Activities from the premises demised under the Lease to a location not on the Property for reasons other than the inability to conduct the Business Activities at the premises demised under the Lease due to casualty, condemnation, the Landlord under the Lease failing to perform its obligations thereunder, or other reasons beyond the reasonable control of GRANTEE or its subsidiaries or any such Related Organization or other permitted transferee of GRANTEE's rights under this Agreement (any of the foregoing being a "Force Majeure Event").

B. Default of GRANTEE. GRANTEE shall be in default under this Agreement:

1. Relocation. If during the Term of this Agreement, GRANTEE occupies and uses the Property for its Business Activities and subsequently Relocates (as defined in this Article 7, Paragraph A) during the Term, then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Relocation occurred. Unless GRANTEE presents credible evidence to clearly indicate a date of Relocation, GRANTOR's determination shall be final and conclusive. Upon termination, GRANTOR shall have the right to recapture from GRANTEE a percentage of the Grants previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.

2. Ceasing. If, after the conditions set forth in Section 2 of this Agreement are met, GRANTEE occupies and uses the Property for its Business Activities and subsequently ceases conducting Business Activities at the premises demised under the Lease for a continuous period of three (3) months during the Term of this Agreement for any reason, except if such cessation is caused by a Force Majeure Event; then GRANTOR shall have the right to terminate this Agreement. Said termination shall be effective for the calendar year during which the Property was no longer used for the required purposes stated herein. Unless GRANTEE presents credible evidence to clearly indicate a date of cessation, GRANTOR's determination of a date of cessation shall be final and conclusive. Upon termination, GRANTOR shall have the right to recapture from GRANTEE a percentage of the Grants previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement and not previously recaptured by GRANTOR in accordance with the recapture schedule set forth below and GRANTOR shall be entitled to the payment of the amounts to which it is entitled within sixty (60) calendar days from the date it notifies GRANTEE in writing of termination and its election to recapture such amounts.

3. Number of Jobs. If GRANTEE, its affiliates and/or subsidiaries, any Related Organization, and/or other City-approved assignee permitted under this Agreement fails to, for any reason other than a Force Majeure Event, :

a. relocate to, or create at, the premises demised under the Lease at least THREE HUNDRED FIFTY (350) Full-Time Jobs on or before December 31, 2012 or having done so thereafter fails to maintain at the premises demised under the Lease at least TWO HUNDRED AND SIXTY-FIVE (265) Full-Time Jobs during the Term of this Agreement, GRANTOR may terminate this Agreement. Upon such termination, a percentage of the Grants previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement which have not been previously recaptured by GRANTOR may be recaptured by GRANTOR according to the schedule below.

b. maintain at the premises demised under the Lease an average of THREE HUNDRED AND FIFTY (350) full-time jobs for a period of two consecutive annual reporting periods, but maintains at least TWO HUNDRED SIXTY (265) Full-Time Jobs during such periods, then a percentage of the Grant previously disbursed to the GRANTEE, and/or for the benefit of the GRANTEE, under this Agreement which are attributable to jobs created above, said TWO HUNDRED AND SIXTY-FIVE (265) jobs threshold and not subsequently maintained may be recaptured by the GRANTOR, to the

extent same have not been previously recaptured by GRANTOR, according to the schedule below.

E. In any circumstance where GRANTOR is entitled and elects, to recapture a portion of the Grants disbursed hereunder, the portion subject to recapture shall be as follows:

<u>TERM YEAR IN WHICH RECAPTURE OCCURS</u>	<u>TOTAL PERCENTAGE OF UNRECAPTURED FUNDS TO BE RECAPTURED:</u>
1-5	100%
6	80%
7	60%
8	40%
9	20%
10	0%

GRANTOR shall be entitled to the payment of such disbursed funds within sixty (60) calendar days from the date it notifies GRANTEE in writing.

F. Limitation on Recapture. Notwithstanding the foregoing, any such recapture shall be subject to any and all lawful offsets, settlements, deductions or credits to which GRANTEE may be entitled at law or under this Agreement. The termination and/or recapture of grant funds provided in this Section 12 are not applicable to situations involving minor changes to the description of the Property, or changes in ownership or in management thereof, so long as GRANTEE, its parent, subsidiary, affiliate or any successor or assignee allowed under the terms of this Agreement, continues conducting Business Activities or other authorized activities thereon as provided hereinabove.

G. Limitation on Remedies. The foregoing termination and recapture rights shall be GRANTOR's sole and exclusive remedies in the event GRANTEE shall default under this Agreement.

H. GRANTOR Default. GRANTOR shall be in default under this Agreement if it defaults in the performance of any of its obligations under this Agreement and such failure continues uncured for a period of thirty (30) days from and after the date GRANTEE notifies GRANTOR of such failure. Upon a default by GRANTOR, GRANTEE shall be entitled to seek any right or remedies available to it at law or in equity, including, without limitation, bringing an action to require GRANTOR to specifically perform its obligations hereunder including, without limitation, a mandamus action to compel such performance and shall expressly be allowed to recoup any and all amounts which it is owed by GRANTOR by crediting same against any and all amounts that may thereafter be owed by GRANTEE or any of its subsidiaries (direct or indirect) or affiliates to GRANTOR, including, without limitation, any amounts owed by Visionary Properties, Inc. under the Parking Agreement. GRANTOR acknowledges that GRANTEE's remedies shall be cumulative of each other.

For purposes of enforcement of this Agreement by GRANTEE, GRANTOR, to the fullest extent allowed by law, hereby waives any and all defenses, or other rights to assert claims, of sovereign immunity, including, without limitation, immunity from liability and immunity from suit by Grantee for all purposes in any such enforcement action by GRANTEE.

#### **SECTION 16. AUTHORIZED RELIEF FROM PERFORMANCE (Force Majeure)**

In addition to relief expressly granted in this Agreement, GRANTEE shall be granted relief from performance of this Agreement to the extent GRANTEE is prevented and/or impaired from compliance and performance by any Force Majeure Event. The burden of proof for the need for such relief shall rest upon GRANTEE. To obtain relief based upon this Section 13, GRANTEE must file a written notice with the GRANTOR's International and Economic Development Department specifying the Force Majeure Event and the performance under this Agreement that such event is impairing.

#### **SECTION 17. SPECIAL CONDITIONS AND TERMS**

GRANTEE, in accordance with Chapter 2264 of the Texas Government Code, agrees not to knowingly employ any worker during the Term of this Agreement who is not lawfully admitted for permanent residence to the United States or who is not authorized under law to be employed in the United States ("Undocumented Workers"). If GRANTEE is convicted of a violation under 8 U.S.C. Section 1324a (f), then GRANTEE shall repay GRANTOR the amounts granted by this Agreement for the tax year(s) covered under this Agreement during which such violation occurred. Such payment shall be made within 120 business days after the date GRANTEE is notified by GRANTOR of such violation. GRANTOR, in its sole discretion, may extend the period for repayment herein. Additionally, GRANTEE shall pay interest on the amounts due to GRANTOR under this Section 14 at the rate of five percent (5%) per annum from the date of such violation notice until paid. GRANTEE shall not be liable for a violation of Chapter 2264 by a subsidiary, affiliate or franchisee or by a person with whom GRANTEE contracts.

#### **SECTION 18. TIME IS OF THE ESSENCE**

The parties acknowledge that time is of the essence with respect to their obligations under this Agreement.

#### **SECTION 19. NO WAIVER**

Failure by either party to exercise any right or remedy hereunder available to it shall not constitute a waiver of the right to exercise that or any other right or remedy at any time in the future, absent a written agreement to the contrary.

#### **SECTION 20. NON-ASSIGNMENT**

This Agreement is not assignable by any Party without the written consent of the non-assigning Parties. GRANTOR shall not unreasonably withhold, condition, or delay its consent to any such assignment by GRANTEE. In the event that GRANTOR elects to assign this Agreement to \_\_\_\_\_ (the "TIRZ"), GRANTEE will not unreasonably withhold, condition or delay its consent to such assignment provided the TIRZ assumes all obligations of GRANTOR hereunder in a writing upon which GRANTEE can rely and the TIRZ is duly authorized under all applicable laws, rules and regulations pertaining to it to assume, and perform, such obligations and receive the assignment of this Agreement. No assignment of this Agreement by GRANTOR to the TIRZ will serve to release GRANTOR from its obligations hereunder and GRANTOR shall remain fully liable on this Agreement and for the performance of all terms, covenants and provisions of this Agreement to be performed by the "GRANTOR" hereunder notwithstanding any such assignment. GRANTEE's consent to any such assignment to the TIRZ shall not be deemed or construed as constituting GRANTEE's consent to any further assignment of this Agreement. Except for assignments to the TIRZ, as contemplated above, GRANTEE may withhold its consent to any other assignment of this Agreement by GRANTOR in its sole and absolute discretion. Notwithstanding the foregoing, GRANTEE may assign this Agreement to a Related Organization, without the written consent of the GRANTOR. If GRANTEE so assigns this Agreement it will provide notice of such assignment to GRANTOR on or before the thirtieth (30<sup>th</sup>) day

following the date of assignment. Any assignment of this Agreement in violation of this Section shall enable GRANTOR to terminate this Agreement and exercise its rights under this Agreement. Any assignment of this Agreement by GRANTEE shall relieve GRANTEE of all obligations and liabilities under this Agreement. Notwithstanding the foregoing, GRANTEE and/or any successor to GRANTEE's interest in the this Agreement may collaterally assign and/or grant a security interest in the payments to be received by GRANTEE hereunder without GRANTOR's consent if required by any lender providing financing to any such entity or any parent, subsidiary, or affiliated company of such entity.

## **SECTION 21. ORAL AND WRITTEN AGREEMENTS**

All oral and written agreements between the Parties to this Agreement relating to the subject matter of this Agreement that were made prior to the execution of this Agreement have been reduced to writing and are contained in this Agreement.

## **SECTION 22. NOTICE**

Any notice required or permitted to be given hereunder by one party to the other shall be in writing and the same shall be given and shall be deemed to have been served and given if: (a) delivered in person to the address set forth herein below for the party to whom the notice is given; (b) placed in the United States mail with postage prepaid, return receipt requested, properly addressed to such party at the address hereinafter specified; or (c) deposited, with fees prepaid, into the custody of a nationally recognized overnight delivery service such as FedEx, addressed to such party at the address hereinafter specified. Any notice mailed in the above manner shall be effective two (2) business days following its deposit into the custody of the United States Postal Service or one (1) business day following its deposit into the custody of such nationally recognized delivery service, as applicable; all other notices shall be effective upon receipt. From time to time, either party may designate another address for all purposes under this Agreement by giving the other party no less than ten (10) calendar days advance written notice of such change of address in accordance with the provisions hereof.

TO GRANTOR:

TO GRANTEE:

(Whether personally delivered or mailed):

City of San Antonio  
Attn: International and Economic Development  
P.O. Box 839966  
San Antonio, Texas 78283-3966

- If by personal or overnight delivery:

International and Economic Development  
Attn: Director  
19th Floor  
100 Houston St.  
San Antonio, Texas 78205

COPIES TO:

City Attorney  
3<sup>rd</sup> Floor – City Hall  
100 Military Plaza

If prior to the date GRANTEE relocates to the premises:

HVHC, Inc.  
c/o Eye Care Centers of America, Inc.  
11103 West Avenue  
San Antonio, Texas 78213  
Attn: Vice President – Real Estate

After such relocation:

HVHC, Inc.  
175 E. Houston Street, Suite \_\_\_\_\_



San Antonio, TX 78205

San Antonio, Texas 78205  
Attn: Vice President – Real Estate

### SECTION 23. INCORPORATION OF EXHIBITS

Each of the Exhibits and Attachments listed below is an essential part of the Agreement, which governs the rights and duties of the parties, and shall be interpreted in the order of priority as appears below:

Exhibit A – Acknowledgement of Lease  
Exhibit B – PARKING AGREEMENT

### SECTION 24. TERMINATION

GRANTEE may terminate this Agreement at any time prior to December 31, 2011 if Visionary Properties, Inc. elects not to enter into the Lease for any reason.

**WITNESS OUR HANDS, EFFECTIVE as of SEPTEMBER \_\_\_\_, 2011 (the “EFFECTIVE DATE”):**

Accepted and executed in triplicate originals on behalf of the City of San Antonio pursuant to the attached Ordinance Number 2011-08-\_\_ - \_\_\_\_ and GRANTEE pursuant to its authority.

**CITY OF SAN ANTONIO,**  
a Texas Municipal Corporation

**HVHC, Inc. (GRANTEE)**  
a \_\_\_\_\_ corporation

\_\_\_\_\_  
Sheryl L. Sculley  
CITY MANAGER

\_\_\_\_\_  
Name: David Holmberg  
Title: President and Chief Executive Officer

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
CITY CLERK

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard  
CITY ATTORNEY

## **EXHIBIT A: ACKNOWLEDGEMENT OF LEASE**

### **CERTIFICATE OF LEASE**

This Certificate of Lease is executed by Visionary Properties, Inc. ("Tenant") and International Bank of Commerce ("Landlord") in favor of the City of San Antonio (the "City"), pursuant to the terms of that certain Economic Development Program Grant Agreement (the "Agreement") dated \_\_\_\_\_ by and between the City of San Antonio and HVHC, Inc.

In furtherance of the requirements of the Agreement, the Landlord and Tenant do hereby certify to City as follows:

1. Landlord and Tenant have entered into that certain lease agreement dated \_\_\_\_\_, (the "Lease") pertaining to certain premises located in Landlord's building commonly known as 175 E. Houston Street, San Antonio, Texas.

2. The Lease has a term of at least ten (10) years, exclusive of renewal options.

3. The Lease is for approximately \_\_\_\_\_ rentable square feet of space located in Landlord's building, and contains certain rights of Tenant to further expand the premises demised thereunder.

4. The only rights set forth in the Lease for either Landlord or Tenant to terminate the Lease are summarized as follows:

- a. In the event of casualty or condemnation, Landlord and Tenant each have certain termination rights more particularly detailed in the Lease.
- b. Landlord has the right to terminate the Lease if an "Event of Default" has occurred and is continuing by Tenant under the Lease. Landlord also has certain termination rights upon the abandonment of the premises demised under the Lease by Tenant (even where such abandonment is not an "Event of Default").
- c. Tenant has the right to terminate the Lease if (i) Tenant loses its parking rights the Agreement by and between the City and Tenant and dated \_\_\_\_\_ pertaining to parking spaces at the City's garage located at 400 N. St. Mary's, San Antonio, Texas, through no fault of Tenant and (ii) Landlord does not obtain comparable substitute parking for Tenant within one hundred eighty (180) days of such loss; and
- d. Landlord and Tenant each have the right to terminate the Lease if Tenant does not reach an agreement acceptable to Tenant with the City with respect to certain economic development incentives and parking rights for the 400 N. St. Mary's garage on or before September 22, 2011.

IN WITNESS WHEREOF, this Certificate is executed as of the \_\_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

International Bank of Commerce

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Visionary Properties, Inc.

By: \_\_\_\_\_  
Charles Anderson, President

**EXHIBIT B: PARKING AGREEMENT**

## **PARKING AGREEMENT OF THE CITY OF SAN ANTONIO**

This Parking Agreement (hereinafter referred to as the "Agreement") is hereby made and entered into by and between the CITY OF SAN ANTONIO, (hereinafter referred to as "OWNER"), a Texas Municipal Corporation acting by and through its City Manager and VISIONARY PROPERTIES, INC., a corporation formed in accordance with the laws of the State of Delaware, (hereinafter referred to as "VPI") for the use of parking spaces located at 400 N. St. Mary's Street, San Antonio, Bexar County, Texas 78205, known as the City-owned St. Mary's St. Parking Garage (hereinafter referred to as "the LICENSED PREMISES"). Together, the City and VPI may be referred to as "the Parties."

### **I. TERM/RENEWAL**

1.1 The initial term ("Initial Term") of this Agreement shall be for eleven (11) years and six (6) month commencing on the date (herein the "Commencement Date") which is the "Commencement Date" of the Term of that certain Lease Agreement ("Lease") by and between VPI and \_\_\_\_\_ for premises located in the building located at 175 E. Houston St., San Antonio, TX 78205 and terminating on the last day of the 138<sup>th</sup> calendar month thereafter. Notwithstanding that the Initial Term will not begin until the Commencement Date, this Agreement shall be a binding contract between the Parties upon the execution and delivery of same by the Parties.

1.2 It is agreed that VPI shall have the right to extend the Initial Term of this Agreement for two (2) additional five (5) year periods (each a "Renewal Term") by sending OWNER written notice of its election to so extend the Term for either such period at least one hundred eight (180) days prior to the expiration of the Initial Term, or first Renewal Term, as applicable. Any such renewal and extension shall be on the terms provided herein, however, VPI and OWNER acknowledges that the License Fee owed hereunder during any such Renewal Term shall be at market rate for "unreserved" monthly parking then established by either: 1) the City of San Antonio by an adopted City ordinance for monthly parking at all City-owned parking garages, as same may be adjusted from time to time, if the City of San Antonio or any related entity including the Houston Street TIRZ No. 9 is the owner of the LICENSED PREMISES at such time; or 2) by the average of the City of San Antonio "unreserved" monthly parking rate at all City-owned garages and "unreserved" monthly parking rates at privately owned garages in the downtown area, if the City of San Antonio or any such related entity is not then the owner of the LICENSED PREMISES. If OWNER increases such License Fee for or during any Renewal Term, it shall send VPI at least sixty (60) days prior written notice of its intent to do so and VPI may elect to terminate this Agreement by sending OWNER written notice thereof prior to the date any such rate increase takes effect. For purposes of this Agreement the "Term" hereof shall mean the Initial Term and any Renewal Term.

### **II. LICENSED PREMISES**

2.1 OWNER, for and in consideration of the payment of the LICENSE FEES set forth below and the covenants and agreements hereinafter contained, does hereby grant to VPI a

license to utilize up to THREE HUNDRED AND FIFTY (350) parking spaces within the LICENSED PREMISES as requested according to Section 5.10 of this Agreement, as depicted in Exhibit A, which is attached hereto and incorporated herein, to have and to hold for the Term of this Agreement on the terms and conditions set forth in this Agreement . In addition to the right to use such parking spaces, throughout the Term of this Agreement, VPI and the others entitled to use the parking spaces designated to VPI hereunder shall also have the right to use all other portions of the parking structure containing such spaces including, without limitation, all driveways, stairways, elevators and other facilities intended for the use of all parking patrons at the LICENSED PREMISES.

**2.2** The LICENSED PREMISES may be used by VPI as parking for its officers, directors, agents, contractors, and employees and for the employees, officers, directors, agents and contractors of any parent, subsidiary or affiliated entity, or any assignee or subtenant of VPI, occupying any part of the premises demised under the Lease.

**2.3** VPI shall not occupy or use, nor permit any portion of the LICENSED PREMISES to be occupied or used for any business or purpose which is not the same as the purpose stated in Section 2.2 above or is unlawful in part or in whole or deemed to be disreputable in any manner.

**2.4** OWNER reserves the right to create and enforce all reasonable, necessary and proper rules and policies for the management and operation of the LICENSED PREMISES, and may eject from the LICENSED PREMISES, any person or persons it reasonably deems has violated said rules and policies. VPI, and those authorized to use the LICENSED PREMISES by VPI shall comply with all reasonable rules and regulations of the OWNER governing the use of the LICENSED PREMISES. VPI and those individuals authorized to utilize the parking spaces designated to VPI shall use the spaces in such a manner as not to create any nuisance or otherwise unreasonably interfere with OWNER's business operations as they pertain to the operation of the LICENSED PREMISES as a public parking garage. Any rules and/or regulations adopted by OWNER from time to time with respect to the LICENSED PREMISES or adopted by any owner or operator of the LICENSED PREMISES during the Term of this Agreement shall not discriminate against VPI vis-a-vis any other users of the parking garage, will not require the payment of any additional monies by VPI, and may not conflict with any rights granted to VPI under this Agreement. VPI and those authorized to use the LICENSED PREMISES by VPI shall not be obligated to comply with any rule or regulation adopted by the OWNER which violates the foregoing.

### **III. ACCEPTANCE AND CONDITION OF LICENSED PREMISES**

**3.1** From and after the effective date of this Agreement OWNER shall maintain the LICENSED PREMISES in good condition and repair (including, without limitation, all structural elements, roofs, exterior walls, mechanical, electrical and plumbing systems, elevators, lighting systems and equipment) and keep same in compliance with all applicable laws, rules and regulations of any governmental authority pertaining to same from time to time including, without limitation, the Americans With Disabilities Act, as same may be modified or amended from time to time. From and after the effective date of this Agreement through the expiration or earlier termination of this Agreement, OWNER shall ensure the continued operation of the

LICENSED PREMISES as a public parking garage consistent with the way same is operated on the effective date of this Agreement. OWNER may not make any material alterations or additions to LICENSED PREMISES or any systems, equipment or facilities which are a part thereof or which serve same, if such alteration or addition would materially interfere with the rights of VPI hereunder to use the LICENSED PREMISES. OWNER must also cause the LICENSED PREMISES to be lighted twenty-four (24) hours a day, throughout the Term of this Agreement in accordance with its current operating practices for the building.

3.2 VPI agrees that, except as set forth in this Agreement, (i) no representations as to the condition of the LICENSED PREMISES and (ii) no promises to alter, repair, or improve the LICENSED PREMISES, either before or after the execution hereof, have been made by OWNER.

#### IV. USE

4.1 While VPI will be given as many access cards as it requires for use in accordance with this Agreement, up to a maximum of three hundred fifty (350), it is expressly agreed that the spaces provided for its use shall be on a non-exclusive basis; however, OWNER agrees that at all times between the hours of 6:00 a.m. to 7:00 p.m. Monday through Friday, during the Term, OWNER will ensure that a number of parking spaces will be available at the Leased Premises equal to the number of parking cards then held by VPI and that OWNER must ensure that at least fifty (50) parking spaces in the LICENSED PREMISES are available for VPI's designated use after such working hours and on weekends throughout the Term.

4.1.1 If OWNER fails to ensure that the required number of parking spaces are available on more than ten (10) days in any calendar year, for reasons other than damage by casualty or condemnation, OWNER shall be in default under this Agreement and, VPI, at its option, and in addition to any other rights or remedies which may be available to it, may obtain injunctive or other equitable relief, including, without limitation, specific performance to ensure that the OWNER makes the required parking spaces available at all times during the Term of this Agreement. OWNER acknowledges such action may be by mandamus or other procedure authorized by law.

4.1.2 In addition, on each day that it is documented that the total number of parking spaces designated to VPI's use are not available at the LICENSED PREMISES due to OWNER's failure to reserve the amount of parking spaces designated for VPI at the time, and any person authorized to use the parking spaces in the LICENSED PREMISES by VPI is not able to park their car at the LICENSED PREMISES as a result, OWNER will provide for such user to have free parking in the nearest available City of San Antonio garage provided same may not be farther away from the LICENSED PREMISES than a one mile radius, or if none exist another comparable parking structure within such radius.

4.2 VPI agrees and specifically understands that this Agreement is confined to the privilege of using parking spaces within the LICENSED PREMISES and the "common areas"

thereof as previously outlined and that the permission given herein given does not grant VPI any leasehold estate in the LICENSED PREMISES. OWNER retains dominion, possession, and control of said LICENSED PREMISES, including access thereto, at all times. Notwithstanding the foregoing, the rights granted to VPI under this Agreement shall constitute a "License coupled with an interest" and may not be terminated by the OWNER except as expressly allowed by the terms of this Agreement.

**4.3** VPI shall use reasonable efforts to ensure that those individuals authorized by VPI to use said LICENSED PREMISES shall in no way obstruct ingress or egress or limit accessibility to OWNER's property or the general public or by others having licenses or other interests in or about the LICENSED PREMISES.

**4.4 RESERVED.**

**4.5** OWNER, so long as the City of San Antonio owns the LICENSED PREMISES, reserves the right to restrict the use of the LICENSED PREMISES on days when its use is required for City of San Antonio health and safety emergencies, at the sole discretion of OWNER. In such cases, OWNER will give notice to VPI, as is reasonable under the circumstances of such restricted use and any License Fees attributable to periods of time that use of the LICENSED PREMISES is so restricted will be abated.

**4.6** No alterations or additions to the LICENSED PREMISES are permitted or will be performed by VPI.

## **V. OPERATIONS**

**5.1** OWNER does not warrant the security of vehicles or persons under this Agreement and accepts no responsibility or liability for any loss or damage of any kind for any reason.

**5.2** VPI's employees must not exceed five (5) mph within the LICENSED PREMISES, must afford the right-of-way to pedestrians, and must extend courtesy to other drivers.

**5.3** VPI acknowledges that vehicles parking in the LICENSED PREMISES shall be of a passenger-type trucks, cars and motorcycles only. The following will not be allowed in the LICENSED PREMISES:

- a. Vehicles with a gross vehicle weight rating (GVWR) in excess of 20,000 lbs;
- b. Vehicles longer or wider than can be reasonably and safely parked in a standard-sized parking space;
- c. Any type of heavy equipment;
- d. Storage of vehicles; and
- e. Any type of other equipment or materials.



5.4 VPI acknowledges that its employees authorized to park under the terms of this Agreement shall do so only when performing employment duties and only during the working hours of VPI and the respective employee.

5.5 OWNER will provide VPI with automatic monthly parking cards for ingress and egress to the LICENSED PREMISES for use by employees of VPI in accordance with Section 4.1

5.6 VPI shall report any lost or stolen parking cards to the OWNER. VPI will be responsible for paying a Twenty Dollar (\$20.00) fee for any replacement cards that may be necessary due to loss or theft.

5.7 VPI shall maintain a current list of all employees with the respective assigned parking card number. This updated list shall be provided to the OWNER on a monthly basis, no later than the 10<sup>th</sup> day of each month. VPI shall be solely responsible for disbursing parking cards to employees, retrieving parking cards from former employees and requesting replacement cards for any lost or stolen parking cards.

5.8 VPI acknowledges that parking provided in the LEASED PREMISES through this Agreement will not be designated with signage as reserved parking, but VPI employees may park in any available spots.

5.9 VPI may request OWNER to provide Visitor Validation Program for its visitor parking at LICENSED PREMISES. The validation process will be as follows:

5.9.1 OWNER may validate VPI Tickets for one-hour, two-hour, and full-day periods.

5.9.2 OWNER determines the Visitor Validation method, and OWNER may change that method from time to time.

5.9.3 VPI must obtain and maintain at its own expense all equipment necessary for operating its end of the Visitor Validation method in effect at any given time,

5.9.4 VPI will be responsible for payment of the validations based on the current parking rates at LICENSED PREMISES. The OWNER's standard rates for parking in the LICENSED PREMISES may be increased from time to time and the standard rate in effect will be applied.

5.9.5 OWNER will notify VPI of any change in rates at the LICENSED PREMISES.

5.9.6 VPI will be invoiced for any validations monthly, with payment due no later than ten (10) days from due date on invoice.

5.10 Following the execution of this Agreement and prior to the Commencement Date, OWNER shall disburse upon written request from VPI up to THREE HUNDRED AND

FIFTY (350) parking cards to VPI. VPI, however, shall only request the number of parking passes needed upon the Commencement Date and shall request additional parking cards, as needed, by providing the OWNER at least thirty (30) days prior written notice to deliver the additional parking cards.

## **VI. LICENSE FEES**

**6.1** Subject to the terms and conditions of this Agreement, during the Term, VPI will pay the OWNER a monthly license fee of \$87.00 per parking space made available for VPI's designated use under this Agreement. Such rate will be fixed for the first five (5) years of the Term. If at any time after expiration of the fifth (5<sup>th</sup>) year of the Term this Agreement, OWNER elects to raise the rate it charges for "unreserved" monthly parking at the LICENSED PREMISES and raises such rate on a uniform, non-discriminatory basis for all monthly parkers at the LICENSED PREMISES, it will send VPI at least thirty (30) days advance written notice of its election to do so and VPI will thereafter pay the increased rate. Notwithstanding any of the foregoing, it is expressly agreed that regardless of whether the LICENSED PREMISES are owned by the City of San Antonio or by any successor, that at any time during the Initial Term the License Fees may not exceed the rate then charged by the City of San Antonio (regardless of whether City of San Antonio owns the LICENSED PREMISES) in comparable parking garages owned by it and located in the downtown San Antonio area, being defined as the area bordered by US Highway 281 on the east, Interstate 10 on the south and west, and Interstate Highway 35 on the north. If the City of San Antonio owns more than one garage within such area, the License fee allowed to be charged by the OWNER or successor owner at any given time shall be limited to the average of such rates. If the City of San Antonio owns no other such garages, the License Fee may not exceed prevailing market rates for "unreserved" monthly parking in garages located in, or adjacent to, office buildings in downtown San Antonio and used primarily for monthly parking of tenants of such buildings. During any Renewal Term the License Fee may not exceed the amounts set forth in Section 1.2 of this Agreement.

Notwithstanding the foregoing, in accordance with the terms and conditions of that certain Chapter 380 Economic Development Program Grant Agreement by and between City of San Antonio and HVHC, Inc. dated of even date herewith (the "Grant Agreement"), City of San Antonio and VPI covenant and agree that, so long as the Grant Agreement has not been terminated, the following payment mechanism shall apply to payments of the License Fees for the use of the parking spaces for the Term:

6.1.1 City of San Antonio shall "pay" ONE HUNDRED PERCENT (100%) of the License Fees owed by VPI hereunder for the first five (5) years of the Term of this Agreement.

6.1.2 City of San Antonio shall "pay" SIXTY-PERCENT (60%) of the License Fees owed by VPI hereunder in years six (6) through ten (10) and VPI shall pay the remaining FORTY-PERCENT of the License Fees. and

**6.1.3** VPI will pay the monthly License Fees which are not to be “paid” by the City of San Antonio hereunder, monthly in advance on or before the first day of the month to which same apply or within ten (10) days from that date.

**6.2 [RESERVED]**

**6.3** License Fees shall be paid at the following address:

City of San Antonio  
Downtown Operations Office - Parking Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966  
210-207-8266

**6.4** If at any time during the Term of this Agreement City of San Antonio sells the LICENSED PREMISES, it is agreed that the monthly License Fees owed by VPI hereunder shall be deemed to be reduced for the periods of time during the Term from and after the date of such sale by the amount of the License Fees which would have been paid by the City of San Antonio during such period of time pursuant to the terms of Section 6.1.

**6.5** If at any time during the Term of this Agreement, VPI’s use of the LICENSED PREMISES and the parking spaces reserved herein for its use shall be impaired or restricted as a result of the negligence or willful misconduct of OWNER, its agents, employees or contractors, or as a result of OWNER’s failure to perform its obligations under this Lease then it is expressly agreed that the License Fees hereunder shall abate proportionately to the extent VPI’s use of the parking spaces and/or LICENSED PREMISES is so impaired until such time as the use of the parking spaces and/or LICENSED PREMISES by VPI is no longer so impaired. It is expressly agreed that this abatement shall accrue independently of, and cumulatively of, any rights which VPI may have in the event that any failure by OWNER to perform its obligations hereunder rises to a default under the terms of Section 7.2 of this Agreement. Additionally, during any such period of interruption, OWNER must provide replacement parking for the spaces which are not available to VPI in accordance with the procedures and requirements outlined in Section 4.1 of this Agreement.

## **VII. DEFAULT AND REMEDIES**

**7.1** Default. VPI shall be in default under this Agreement if VPI:

- (i) fails to pay any License Fees which VPI is obligated to pay hereunder when due and such failure continues uncured for a period of ten (10) days following VPI’s receipt of written notice of such failure from OWNER;
- (ii) fails to perform any other material obligation hereunder and such failure shall continue uncured for a period of thirty (30) days, or such longer period of time as may be reasonably necessary to cure the failure in question, from and after the date VPI receives written notice of such failure from the OWNER; or

- (iii) except as permitted under Article XI, sells, transfers, conveys or assigns of this Agreement without prior approval of OWNER, as provided in Article XI. Assignment.

Following the occurrence of any event of default by VPI hereunder, OWNER shall be entitled to pursue any and all rights and remedies available to it at law or in equity as a result of such default; provided, however, that if the OWNER terminates this License then OWNER shall not be entitled to pursue any claim for recovery of License Fees and other amounts which would be owed under this Agreement for periods from and after the date of such termination, but OWNER shall be entitled to recover any License fees and other amounts owed for periods prior to such termination. Furthermore, to the extent that applicable law would allow the OWNER to terminate VPI's right to use and possess the LICENSED PREMISES without terminating the Agreement itself, OWNER hereby waives such right and agrees that such remedy shall not be available to OWNER in the event of a default by VPI hereunder.

**7.2** OWNER Default. In the event OWNER fails to perform any of its obligations under this Agreement and such failure continues for fifteen (15) days, or such longer period of time as may be reasonably necessary to cure the failure in question, from and after the date VPI sends written notice of such failure to OWNER, OWNER shall be in default hereunder and VPI shall be entitled to exercise any and all rights and remedies available to it at law or in equity as a result of such default, including, without limitation, the right to bring an action for specific performance against OWNER to compel OWNER to perform its obligations under this Agreement, whether by mandamus or otherwise. In addition, if such default results in an actual or constructive eviction of VPI, VPI may, at its option and without prejudice, and in addition to any other rights or remedies to which it may be entitled, terminate this License. City of San Antonio, to the extent permitted by law, hereby waives any rights it may have to assert a defense, or other claim, of sovereign immunity, whether as immunity from liability or immunity from suit, or otherwise, in any enforcement action brought by VPI as a result of City of San Antonio's default as OWNER hereunder.

### **XIII. TERMINATION/REDUCTION**

**8.1** For purposes of this Agreement, "termination" shall mean termination by expiration of the Term as stated in Article I. Term, or earlier termination pursuant to any of the provisions hereof.

**8.2** Surrender. Regardless of how this Agreement is terminated, VPI shall vacate the LICENSED PREMISES within twenty-four (24) hours of termination of this Agreement.

**8.3** Termination by VPI. Notwithstanding anything contained in this Agreement to the contrary, VPI may terminate this Agreement if (i) VPI elects not to enter into the Lease for any reason, or (ii) after entering into the Lease, if the Lease is terminated for any reason. Should VPI elect to so terminate this Agreement, it shall send OWNER written notice of such termination and the termination will be effective fifteen (15) days from and after the date on which VPI sends such notice. Upon any such termination neither VPI nor OWNER shall have any further

rights or obligations one unto the other hereunder, except any such termination shall not effect either's liability to the other arising out of any obligations under this Agreement prior to the date of such termination.

**8.5**      Reduction in Spaces by VPI. At any time during the term hereof, VPI may also opt to reduce the number of parking spaces reserved for VPI's executive use hereunder by sending OWNER at least thirty (30) days of its election to do so. Should VPI so elect to reduce the number of parking spaces in the LICENSED PREMISES, the License Fee shall be reduced accordingly from and after the effective date of such reduction.

## **IX. INSURANCE REQUIREMENTS**

**9.1**      Prior to the commencement of the Term of this Agreement, VPI shall furnish an original completed Certificate(s) of Insurance to OWNER and the City Clerk's Office, evidencing that VPI is maintaining the insurance required of it under this Agreement. The original certificate(s) must be mailed to OWNER. OWNER shall have no duty to allow VPI to occupy the LICENSED PREMISES until such certificate has been delivered to OWNER, and, so long as City of San Antonio is the OWNER, no officer or employee, other than OWNER's Risk Manager, shall have authority to waive this requirement.

**9.2**      Subject to VPI's right to maintain reasonable deductibles in such amounts as it may elect from time to time, VPI shall obtain and maintain in full force and effect for the duration of this Agreement, and any extension hereof, at VPI's sole expense, insurance coverage written on an occurrence basis, by companies authorized and admitted to do business in the State of Texas and rated A-/VIII or better by A.M. Best Company, in the following types and amounts:

<u>TYPE</u>	<u>AMOUNT</u>
1. Workers' Compensation Employers' Liability	Statutory \$500,000/\$500,000/\$500,000
2. Commercial General (public) Liability Insurance to include coverage for the following: a. Premises operations *b. Independent contractors c. Personal Injury d. Contractual liability *e. Explosion, collapse, underground f. Broad form property damage, to include fire legal liability	Bodily Injury and Property Damage of \$1,000,000 per occurrence, with a \$2,000,000 General Aggregate, or its equivalent, in umbrella or excess liability coverage
3. Business Automobile Liability a. Owned/lease vehicles b. Non-owned vehicles c. Hired vehicles	Combined Single Limit for Bodily Injury and Property Damage of \$1,000,000 per occurrence

\*If applicable

9.3 OWNER shall be entitled, upon request and without expense, to receive copies of the policies and all endorsements thereto as they apply to the limits required by OWNER.

9.4 VPI agrees that, with respect to the above required insurance, all insurance agreements and Certificate(s) of Insurance will contain the following required provisions:

- Name OWNER and its officers, employees, volunteers and elected representatives as additional insureds with respect to operations and activities of, or on behalf of, the named insured at the LICENSED PREMISES, with the exception of the workers' compensation and professional liability policies;
- Provide that to the extent OWNER is an additional insured on VPI's insurance policy the insurance of VPI will be "primary" over any insurance maintained by OWNER;
- Workers' compensation and employers' liability policy will provide a waiver of subrogation in favor of OWNER.

9.5 VPI shall notify OWNER in the event of any notice of cancellation, or non-renewal of any required insurance policy and shall give such notices not less than five (5) business days after VPI receives same from its insurer. In addition, VPI must deliver a replacement Certificate of Insurance prior to the cancellation or expiration of the policy in question. All notices shall be given to OWNER at the following address:

City of San Antonio  
Downtown Operations Office- Parking Division  
P.O. Box 839966  
San Antonio, Texas 78283-3966

9.6 If VPI fails to maintain the aforementioned insurance, OWNER may obtain such insurance, and invoice VPI for the cost of same; however, procuring of said insurance by OWNER is an alternative to other remedies OWNER may have, and is not the exclusive remedy for failure of VPI to maintain said insurance or secure such endorsement.

9.7 Nothing herein contained shall be construed as limiting, in any way, the extent to which VPI may be held responsible for payments of damages to persons or property resulting from VPI's performance under this License.

9.8 OWNER Insurance. (a) OWNER shall keep the LICENSED PREMISES, improvements, alterations, and additions that are located within the LICENSED PREMISES insured against damage or destruction by fire and other casualty, including the perils commonly covered under a so-called "special form" property insurance (ISO) Form CP 10 30 or its future equivalent if same is discontinued) and such other perils as are customarily insured against by

owner's of similar parking structures in the San Antonio, Texas area to the extent of 100 percent of the actual replacement cost thereof.

(b) OWNER shall maintain commercial general liability insurance against claims on account of personal injury, bodily injury, death or property damage incurred upon any part of the LICENSED PREMISES, contractual liability coverage with this Lease as a covered contract, and automobile liability insurance. Such insurance shall have a combined single limit of not less than \$5,000,000 per occurrence.

(c) All OWNER's insurance policies required pursuant to this Section 9.8 shall be issued by one or more responsible insurance companies having an A.M. Best's rating of A-/VIII or better and licensed to do business in the jurisdiction where the LICENSED PREMISES are located and shall be written on an "occurrence" basis, with deductibles not exceeding commercially reasonable amounts for the respective perils covered on its property insurance and \$100,000 on the commercial general liability policy. OWNER shall deliver to VPI certificates of all such policies within ten days of the effective date of such policies and certificates of all renewal policies at least ten days prior to the expiration of any such policies, and upon VPI's written request, OWNER shall also deliver to VPI duplicate copies of such policies and renewals thereof.

(d) So long as City of San Antonio is the owner of the LICENSED PREMISES, the foregoing shall not apply and the following insurance requirements shall pertain to "OWNER":

The City of San Antonio's Defined Self- Insurance Fund was created by City Council for the sole purpose of providing defense of and payment of claims against the City of San Antonio and its officers, employees, members of boards and commissions when and while acting in the ordinary course of their duties, powers and functions. Pursuant to the Texas Tort Claims Act, §101.23, the current maximum limits of liability for claims against a City of San Antonio employee is \$250,000 per claimant and \$500,000 per occurrence. Throughout the Term, City of San Antonio shall maintain such fund in amounts it deems reasonably appropriate.

With respect to Property Insurance, City of San Antonio has purchased and will maintain throughout the Term, a blanket commercial property insurance, which includes coverage for the full replacement value of the LICENSED PREMISES from the perils of fire, wind, hail, theft or vandalism and such other perils as the City of San Antonio customarily insures its properties against from time to time and is subject to a \$200,000 per occurrence deductible (or such greater deductible as City of San Antonio may reasonably elect to carry from time to time).

## **X. INDEMNITY**

**Subject to the waiver and release set forth below, VPI covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, OWNER and the elected officials, employees, officers, directors, volunteers and authorized representatives of OWNER, individually or collectively, from and against any and all claims, damages, judgements, losses, expenses, fees, causes of action, liability and suits of any kind in law or in equity: arising out of any negligent or willfully wrongful act or omission of VPI or any persons authorized by VPI to**

use the parking spaces at the LICENSED PREMISES by VPI, at the LICENSED PREMISES, (including any damage to or loss of any property belonging to : (a) VPI or any one using any of the LICENSED PREMISES by, through or under VPI, or (b) OWNER and the elected officials, employees, officers, directors, volunteers and representatives of OWNER) except to the extent same arises out of the negligence or willful misconduct of OWNER, its officers, employees, agents, contractors, volunteers or other representatives.

OWNER covenants and agrees to FULLY INDEMNIFY, and HOLD HARMLESS, VPI and those authorized to use the LICENSED PREMISES by VPI, individually or collectively, from and against any and all claims, damages, judgments, losses, expenses, fees, causes of action, liability and suits of any kind in law or in equity: arising out of any negligent or willfully wrongful act or omission of OWNER or any of OWNER's employees, elected officials, officers, directors, agents, volunteers, and/or representatives, at the LICENSED PREMISES, (including any damage to or loss of any property belonging to VPI and/or any person authorized to use the LICENSED PREMISES by VPI) except to the extent same arises out of the negligence or willful misconduct of VPI and/or any person authorized to use the LICENSED PREMISES by VPI. Notwithstanding any of the foregoing appearing to the contrary, it is expressly agreed that the indemnity portion of the preceding sentence shall apply to the City of San Antonio, as OWNER, only to the extent that the City of San Antonio may lawfully make such indemnity but shall fully apply to any party succeeding to the City of San Antonio's ownership interest in the LICENSED PREMISES.

IN THE EVENT VPI AND OWNER ARE FOUND JOINTLY LIABLE BY A COURT OF COMPETENT JURISDICTION, LIABILITY SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, WITHOUT, HOWEVER, WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE OWNER UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS, FEDERAL, OR INTERNATIONAL LAW.

VPI shall promptly advise OWNER in writing of any claim or demand against OWNER or VPI known to VPI for which VPI indemnifies OWNER under this Agreement.

The provisions of this INDEMNIFICATION are solely for the benefit of the parties hereto and not intended to create or grant any rights, contractual or otherwise, to any other person or entity.

NOTWITHSTANDING ANYTHING IN THIS AGREEMENT APPEARING TO THE CONTRARY, OWNER HEREBY RELEASES VPI AND ANY PERSON OR ENTITY UTILIZING THE LICENSED PREMISES BY, THROUGH OR UNDER VPI FROM ALL CLAIMS OR LIABILITIES FOR DAMAGE TO THE LICENSED PREMISES OR THE BUILDING OF WHICH SAME ARE A PART AND/OR DAMAGE TO OR LOSS OF ANY PERSONAL PROPERTY OF OWNER LOCATED THEREIN, AND ANY LOSS OF BUSINESS OR REVENUE RESULTING THEREFROM, THAT WOULD BE COVERED FROM TIME TO TIME BY THE PROPERTY INSURANCE THE OWNER IS



**OBLIGATED TO CARRY UNDER THIS AGREEMENT, OR ACTUALLY CARRIES WITH RESPECT TO THE LICENSED PREMISES, IF BROADER. OWNER AGREES THAT THIS RELEASE WILL APPLY EVEN IF THE DAMAGE OR LOSS IS CAUSED IN WHOLE OR IN PART BY THE NEGLIGENCE OR STRICT LIABILITY OF ANY RELEASED PARTY BUT SAME WILL NOT APPLY TO THE EXTENT THE DAMAGE OR LOSS IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY RELEASED PARTY.**

## **XI. ASSIGNMENT**

**11.1** Except as set forth below, VPI shall not assign or transfer any interest in this Agreement to any other person or entity without OWNER's prior written consent, which consent will not be unreasonably withheld, conditioned or delayed. However, such consent shall not be necessary for an assignment or other transfer of VPI's interest in this Agreement to a Related Organization (being defined as a parent, subsidiary, direct or indirect at any level, or affiliate organization of VPI or any entity which succeeds to or receives an assignment of VPI's interest under this Agreement as a result of a merger, acquisition, or other corporate restructure or reorganization of VPI, or any parent, subsidiary or affiliate of such entity). To be eligible for the benefits of this Agreement, the Related Organization must agree in a writing to comply with all applicable terms herein from and after date it succeeds to VPI's interest in this Agreement. Furthermore, VPI may, without the consent of OWNER, assign its interest hereunder, and/or sublicense all or any part of the spaces reserved to it under this Agreement, to any entity which (i) receives an assignment of VPI's interest in the Lease or (ii) sublets all or any portion of the premises demised to VPI under the Lease, provided VPI must send OWNER notices of any such assignment or subletting within ten (10) days of the date of same.

**11.2** OWNER may assign this Agreement to any entity which acquires ownership of the parking structure in which the LICENSED PREMISES are a part provided that the assignee agrees in writing to assume all obligations of OWNER under this Agreement, in a writing upon which VPI may rely. OWNER shall provide VPI with notice of any such an assignment no later than thirty (30) days prior to the effective date of same.

## **XII. DAMAGE TO LICENSED PREMISES**

**12.1** Subject to the waiver set forth in Article X, VPI shall be responsible for any and all damages to the LICENSED PREMISES caused by the negligence or willful misconduct of its employees in using the LICENSED PREMISES.

## **XIII. DESTRUCTION OF LEASED PREMISES**

**13.1** If the LICENSED PREMISES are destroyed in whole or in part by fire, other casualty, during the term of this Agreement, OWNER must restore same as soon as reasonably possible under the circumstances but in any event within two hundred seventy (270) days of the date of such damage. Should OWNER fail to do so OWNER shall be in default and VPI may in such event terminate this Agreement and bring an action against OWNER for any and all damages it may suffer or incur as a result of such default. If any such destruction materially impairs or

prevents VPI from using any of the parking spaces in the LICENSED PREMISES reserved to it hereunder, it is expressly agreed that the License Fees attributable to such spaces shall be abated from the date of such damage until the date on which OWNER completes its restoration activities and VPI can again use such spaces.

In the event that any such damage at the LICENSED PREMISES would result in less than the designated number of parking spaces being made available to VPI on any day, OWNER must provide alternative parking as follows:

(a) To the extent space is available in any OWNER owned garages, OWNER must first make spaces available in such garages equal in number to the number of spaces which VPI cannot reasonably use in the LICENSED PREMISES, with preference being given to those garages owned by OWNER which are within a one (1) mile radius of the LICENSED PREMISES.

(b), If insufficient spaces are available in such garages, then OWNER must provide other alternative parking as is reasonably acceptable to VPI. Any time OWNER is providing any alternative parking, OWNER must provide transportation at no cost to VPI, between the alternative parking area(s) and the LICENSED PREMISES at regularly scheduled intervals reasonably acceptable to VPI so that its authorized users may be able to timely get to, and return from, work and to safely travel from the alternative parking area(s) to the LICENSED PREMISES during regular business hours.

In calculating the number of spaces unavailable to VPI, it is expressly agreed that the total number of parking spaces in the LICENSED PREMISES which are rendered unusable as a result of the casualty or other damage shall be multiplied by a fraction, numerator is the number of parking spaces available to VPI and the denominator is the total number of monthly parkers in the LICENSED PREMISES. In addition, the total number of spaces available for VPI in any alternative parking area shall be calculated by multiplying the number of available spaces in any alternative parking facility times a fraction, the numerator of which is the number of displaced VPI parkers and the denominator of which is the total number of displaced parkers from the LICENSED PREMISES. In the event OWNER fails to provide the required alternative spaces and/or transportation as set forth in this section, OWNER acknowledges that VPI may seek specific performance and other equitable relief compelling OWNER to perform its obligations under this section, in addition to seeking any other rights and remedies available to VPI at law or in equity as a result of OWNER's failure to do so. Such rights and remedies shall be available to VPI without a necessity of notice or opportunity to cure being given CITY regardless of any other provision in this Agreement appearing to the contrary.

In the event the LICENSED PREMISES are ever not owned by the City of San Antonio, it is expressly agreed that the reference to alternative parking herein as owned by the OWNER shall continue to mean those owned by the City of San Antonio and not that owned by the successor owner of the LICENSED PREMISES, unless VPI subsequently agrees to the contrary.

#### **XIV. CONDEMNATION**

If, at any time during the Term, the entirety of the LICENSED PREMISES should be taken for any public or quasi-public use under right of eminent domain or sale-in-lieu thereof this License shall terminate, unless such taking is effected by the City of San Antonio after it has conveyed its ownership interest in the LICENSED PREMISES to a third party, in which event this License shall continue notwithstanding such taking. If, during the term, any portion of the LICENSED PREMISES is taken for public or quasi-public use by right of eminent domain for sale-in-lieu thereof, and such taking/sale is not by the City of San Antonio following a conveyance of its ownership interest in the LICENSED PREMISES to a third party, then VPI may at its option (i) terminate this License in its entirety or (ii) accept a reduction in the number of parking spaces available to it hereunder by an amount equal to the product of the total spaces rendered unavailable as a result of such taking times a fraction the numerator of which is the total number of spaces designated for VPI's use under this Agreement at such time and the denominator of which is the total number of spaces in the garage prior to such taking. In connection with any such taking, Tenant shall be entitled to receive a portion of the award/sales price paid by the condemning authority for the LICENSED PREMISES equal to the value of VPI's lost parking rights under this Agreement. Any compensation awarded for a taking of OWNER's ownership in the LICENSED PREMISES, exclusive of the amount to which VPI is entitled, shall be the property of OWNER. If after having conveyed the LICENSED PREMISES to a third party, the City of San Antonio subsequently reacquires the LICENSED PREMISES through eminent domain or sale-in-lieu thereof, such acquisition will be subject to the terms of this License and this License shall remain in effect following any such acquisition.

## **XV. RELATIONSHIP OF PARTIES**

**15.1** Nothing contained herein shall be deemed or construed by the parties hereto, or by any third party, as creating the relationship of principal and agent, partners, joint venturers or any other similar such relationship between the parties hereto. It is understood and agreed that no provision contained herein nor any acts of the parties hereto creates a relationship other than the relationship of Licensor and Licensee described herein.

## **XVI. NOTICE**

**16.1** Any notice required or permitted to be given hereunder by one party to the other shall be deemed to be given when deposited in the United States Mail, with sufficient postage prepaid, certified mail, return receipt requested, addressed to the respective party to whom notice is intended, or by hand delivery (courier or otherwise) with signature from the receiving party, to be given at the following address, or such other address as either Party may designate in a written notice to the other:

OWNER: City Clerk  
P.O. Box 839966  
San Antonio, Texas 78283-3966

*and*

Director of Downtown Operations Department  
City of San Antonio  
P.O. Box 839966  
San Antonio, Texas 78283-3966

Until the Commencement Date:

VPI: Visionary Properties, Inc.  
11103 West Avenue  
San Antonio, Texas 78213  
Attn: Real Estate Department

After the Commencement Date:  
Visionary Properties, Inc.  
175 E. Houston Street, Suite \_\_\_\_\_  
San Antonio, Texas 78205  
Attn: Real Estate Department

## **XVII. AMENDMENTS**

**17.1** Except where the terms of this Agreement expressly provide otherwise, any alterations, additions, or deletions to the terms hereof, shall be effected by amendment, in writing, executed by both OWNER and VPI.

## **XVIII. EFFECT OF WAIVER**

**18.1** Either OWNER's or VPI's waiver of a breach of one covenant or condition of this Agreement is not a waiver of a breach of any other covenants or conditions, or of a subsequent breach of the one waived. OWNER's acceptance of License Fee installments after a breach is not a waiver of the breach, except of a breach of the covenant to pay the License Fees.

## **XIX. LEGAL CONSTRUCTION**

**19.1 THIS AGREEMENT SHALL BE CONSTRUED UNDER AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS,** and all obligations of OWNER and VPI created hereunder are performable in Bexar County, Texas. OWNER and VPI hereto further agree that any court of proper jurisdiction sitting in San Antonio, Bexar County, Texas, shall be the proper forum for any legal actions or proceedings brought hereunder.

## **XX. SEVERABILITY**

**20.1** If one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. In such event, it is the intention of OWNER and VPI hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the

parties to this Agreement that in lieu of each clause or provision of this Agreement that is illegal, invalid or unenforceable, there be added as a part of this Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

#### **XXI. CAPTIONS**

**21.1** The captions contained in this Agreement are for purposes of convenience only and shall not, in any way, modify, amend or affect the provisions hereof.

#### **XXII. AUTHORITY**

**22.1** Each of OWNER and VPI represent and warrant to the other that this Agreement has been authorized by all necessary action of such Party and that the person executing this Agreement on behalf of such Party is duly authorized to do so.

#### **XXIII. TIME**

**23.1** Time is of the essence with respect to the Parties obligations under this Agreement.

#### **XXIV. ENTIRE AGREEMENT**

**24.1** This Agreement, and any amendment thereto, contains the final and entire agreement between the parties hereto and contains all of the terms and conditions agreed upon and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind the parties hereto, it being the intent of the parties that neither the VPI nor OWNER shall be bound by any term, condition or representation not herein written.

*Signatures appear on next page.*

EXECUTED AND AGREED TO this the \_\_\_\_ day of September, 2011.

**CITY OF SAN ANTONIO**

**VISIONARY PROPERTIES, INC.,**  
a Delaware corporation

\_\_\_\_\_  
Sheryl L. Sculley  
City Manager

\_\_\_\_\_  
By: Charles Anderson  
Title: President

ATTEST:

\_\_\_\_\_  
Leticia Vacek  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bernard  
City Attorney

# Exhibit A